BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network	CC Docket No. 95-115

REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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October 27, 1995

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Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. Sections 1.49, 1.415, & 1.419 (1994), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments in response to September 27, 1995 initial comments filed by GTE Service Corporation ("GTE"), Teleport Communications Group ("TCG"), the Public Utility Law Project of New York ("PULP"), and the American Association of Retired Persons ("AARP") addressing the "Notice of Proposed Rulemaking" ("NPRM") adopted July 13, 1995 in the above captioned proceeding.

I. BACKGROUND

In our initial comments, NARUC respectfully suggested that, although our association generally supports the FCC's examination of policies to promote telephone subscribership, (i) the FCC should adopt a collaborative approach to addressing the NPRM issues in a manner that is consistent with existing State initiatives and does not hamper State implementation of universal service policies, and (ii) proposals to modify the Lifeline/Linkup programs should be addressed through a Federal-State Joint Board.

NARUC also contended that, because of the possibility, raised by the NPRM, of profound, though perhaps unintended, impacts on existing State regulatory initiatives, both sound public policy and the Administrative Procedure Act indicate that, if the FCC decides to adopt rules for issues on which specific rules were not proposed, the FCC should issue those rules via a further proposed rulemaking to provide an opportunity for additional comment.

Comments on the FCC NPRM were filed September 27, 1995. As discussed, infra, the record complied thus far supports NARUC's contentions that, if the FCC determines to proceed with specific rules, another round of comments is necessary and some coordination with the States is desirable, if not required.

II. DISCUSSION

A. The record in this proceeding generally supports the need for cooperative Federal and State efforts.

Approximately 61 parties filed comments. The overwhelming majority of those comments can be fairly characterized as suggesting that, instead of mandating national programs, the FCC should, where it determines it is appropriate, work with the local exchange carriers ("LECs") and the States to coordinate existing programs and/or examine alternatives for increasing subscribership.[1]

B. Commentors suggesting precipitous preemptive action ignore practical and legal implementation issues.

There were a few notable departures from this general characterization. For example, after "recognizing the strong public policy principles for deferring to the States on many regulatory matters" and agreeing with NARUC that federal action

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[1] See, e.g., the initial comments of Rochester Telephone Co. at 2-3, suggesting the FCC work with States to address the issues in a more targeted, less expensive, and more effective fashion than that proposed in the NPRM; Bell Atlantic at 6, suggesting that if formal action appears warranted, the FCC should convene a Federal-State joint Conference, and at 8-11, suggesting that deposit requirements should be addressed at the state level; National Telephone Cooperative Ass'n at 8-9 urging the FCC to look at State experiments before mandating rules; TDS Telecommunications Corp. at 4 and 8-9, suggesting that there are numerous ongoing LEC and State programs and experiments and suggesting the FCC encourage such experimentation but refrain from mandating solutions; Iowa Utilities Board at 3, urging the FCC to work cooperatively with the States by developing surveys and targeted guidelines; the Maine Public Utilities Commission at 2, suggesting the FCC explore ways to collaborate with the States, and finally, Pacific Bell at 1-7, suggesting the FCC work with States on these measures but not mandate any programs.

should be consistent with existing State initiatives, the AARP nevertheless argues, at pages 9 & 10 of their comments, that "...the strong federal interest in promoting universal service and encouraging competition warrants FCC pre-emption" to prohibit disconnection of local service for nonpayment of interstate services. At pages 9 & 10 of its comments, TCG agrees the FCC should take action. PULP makes similar arguments at pages 8 & 9 of its comments. GTE, at page 41 of its comments, takes the other extreme and suggests the FCC should prevent States from adopting rules that require LECs to maintain local service to subscribers that have not paid their toll charges.

As mentioned, supra, NARUC has suggested that (i) universal service issues are best addressed through a collaborative federal-state process, rather than by a process in which state input is limited to the filing of written comments and (ii) any FCC action in this docket should be consistent with existing state policies and initiatives and limited to situations where clear federal policies would otherwise be frustrated.[2] However, the AARP, TCG, PULP, and GTE positions discussed above appear to advocate immediate preemption of existing State universal service regulatory paradigms. These positions ignore critical practical and legal problems associated with immediate FCC preemptive action.

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[2] Other than NPRM's proposed changes to the lifeline/linkup programs. Those proposed changes should be immediately referred to a federal-state joint board. See, NARUC's September 17, 1995 Initial Comments at 7.

(1) Precipitous preemptive federal action at this critical juncture in the evolution of policies addressing emerging local competition issues could significantly retard existing and planned State initiatives to manage competitive entry while continuing to maintain existing State universal service goals.

As a preliminary matter, all four of these commentors eschew discussing the potential impact on existing State programs to assure universal service and introduce competition in the provision of local services. That subscribership issues are critically important to the States cannot be questioned. Indeed, even though an extensive analysis of the FCC proposal was not possible because the NPRM came out just before our meetings, NARUC's Executive Committee, consisting of regulators from 26 State Commissions, managed to pass unanimously the resolution authorizing NARUC's participation in this docket. In addition, more than twelve of those Commissions diverted scare staff resources to filing their own separate comments and a group of interested State commissions, fostered by NARUC, is engaging the FCC staff via noticed ex parte communications on this issue. Indeed, as the tables attached in Appendix B of NARUC's initial comments, the NPRM's favorable discussion of existing State-approved LEC disconnection procedures at ¶ 11, mimeo at 5, and even PULP's extensive reliance on the New York commission's existing regulatory program demonstrate,[3] all fifty States have an existing regulatory structure targeting disconnection policy and related subscribership issues.

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[3] PULP Comments at 8-9.

As we noted in our initial comments, these existing universal service programs are coming under increased scrutiny at the State level as a result of the increasing convergence of competitive forces on the provision of local service. Precipitous preemptive federal action at this critical juncture in the evolution of policies addressing emerging local competition issues could significantly retard existing and planned State initiatives to manage competitive entry possibly thwarting State efforts to appropriately adjust universal service policy.[4] NARUC maintains, that to the extent the FCC determines to take any action in this docket, it should coordinate with the States to the maximum extent possible to assure that such impacts do not occur. Moreover, this potential for unintended impacts, and the conflicting evidence on the efficacy of some NPRM-proposed solutions in the record, [5] require that, before taking any action, the FCC refine and characterize in detail any proposed regulations in a further notice and allow for additional comment and further development of the record.

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[4] Compare, the comments of GTE at 11-13 suggesting an FCC requirement for interstate only blocking services would distort competition for local exchange service.

[5] See, e.g., the comments of Ameritech at 6-9 contending that no correlation between a prohibition against disconnection for nonpayment of toll and penetration levels has been demonstrated; Accord, comments of Bell Atlantic at 4-5; BellSouth at 2-4; National Telephone Cooperative Ass'n at 8-9; Pacific Bell at 17-20; United States Telephone Ass'n at 7-9; LDDS at 5-6; MCI at 13 -17; and Alaska Public Utilities Commission at 1-2. Compare, the comments of Alaska Telephone Ass'n at 2, suggesting the technology is available to provide jurisdictional toll blocking but the process would ultimately drive up the cost of the service.

(2) The record suggests that, at least with regard to disconnection policy, the FCC may lack the legal authority to impose a complete solution.

The AARP, TCG, PULP, and GTE positions on disconnection policy referenced earlier either cite or parrot the NPRM discussion of FCC authority or simply assume that such authority exists. However, a close examination of a cross-section of comments suggest the nature and extent of the FCC's jurisdiction to address these matters alone is less than clear.

For example, the Public Utilities Commission of the State of Ohio persuasively argues in its comments at pages 3-5, that the FCC lacks jurisdiction to prohibit LECs from disconnecting a local service for non-payment of either intrastate or interstate toll services. PUCO is not the only commentor to make this suggestion. A number of non-governmental parties presented additional compelling arguments supporting PUCO's thesis.[6] As it is unclear if the FCC, acting alone, has the authority to provide a comprehensive approach to disconnection policy, NARUC respectfully suggests that, should the FCC act to address disconnection policy, it should assure its actions (i) are consistent with existing state policies and initiatives and (ii) do not limit the flexibility of the states to implement their own universal service policies.

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[6] See, e.g., the initial comments of MCI at 9-13, Telephone Electronics Corp. at 5-10, BellSouth at 5-6., Bell Atlantic at 8-11, Pacific Bell at 20-22, and Ameritech at 6-7; Cf. Comments of Rochester Telephone Co. at 3-4, NYNEX at 5-6.

III. CONCLUSION

For the foregoing reasons, NARUC respectfully requests that the FCC (i) refer proposals to modify the Lifeline/Linkup programs to a Federal-State Joint Board, (ii) assure that FCC actions in this docket do not impede state implementation of universal service policies tailored to local conditions or disrupt existing state subscribership regulatory paradigms, and finally, (iii) issue a further NPRM if it decides to adopt rules on issues for which specific rules were not proposed.

Respectfully submitted,

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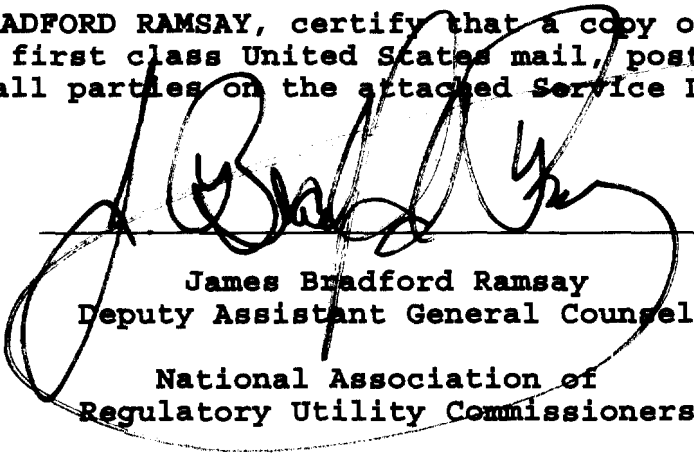
CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was sent by first class United States mail, postage prepaid, to all parties on the attached Service List.



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